140.

SUPREME COURT OF THE UNITED STATES.

No. 148.

SAMUEL SAMPLE, ISRAEL W. PICKENS, AND BURWELL SCOTT, APPELLANTS,

vs.

SHADRACH BARNES.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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SAMUEL SAMPLE
vs.
SHADRACH BARNES.

Pleas before the honorable Samuel J. Gholson, judge of the United States, at a circuit court of the United States, held at the town of Jackson, in and for the north circuit and southern district of Mississippi, at the November term, in the year of our Lord one thousand eight hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the 5th day of May, A. D. 1840, came Samuel Sample, Israel W. Pickens, and Burwell Scott, by their solicitor William Yerger, into the clerk's office of the court aforesaid, and filed their bill in equity herein against Shadrach Barnes, which bill is in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States, sitting in chancery, for the southern district of Mississippi, and 9th judicial circuit.

The bill of complaint of Samuel Sample, Israel W. Pickens, and Burwell Scott, who are citizens of the State of Mississippi, complainants, against Shadrach Barnes, who is a citizen of the State of Alabama, defendant.

Humbly complaining, your orators would respectfully show to your honors, that some time before the month of October, in the year 1836, the defendant Barnes and one Durrett introduced into the State of Mississippi a large number of negro slaves as merchandise, and for purposes of sale, from other States of this Union; and at Lexington in the said State of Mississippi, about that time, sold a large number of them so introduced, and in pursuance of the original design of their introduction, to one Thomas B. Ives, a citizen of the State of Mississippi; said slaves so introduced were brought into this State for the purpose aforesaid, since the first day of May, in the year 1838, and in direct violation, as your orators charge, of the constitution of the State of Mississippi. They were also introduced and sold as your orators verily believe, without the said defendant and Durrett having complied with the requisitions of the act of 1822, ch on the subject of slaves, free negroes and mulattoes, passed by the legislature of the State of Mississippi. The sale thereof, so made to the said Ives, was as your orators believe illegal and void. The said Barnes took in payment of the slaves sold the bill of exchange drawn by said Ives upon N. & J. Dick & Co., of New Orleans, bearing date in October, 1836, and endorsed by your orator Samuel Sample, and G. A. Thompson; which bill was presented for acceptance, which was refused, nor was the same protested for non-acceptance. It was also, as your orators believe and charge, presented for payment, which was also refused, nor was the same protested for non-payment, nor were any other steps taken by the said Durrett and Barnes to fix your orators' liability on said bill. Some-

time after this, in the year 1837, the said Ives and Barnes had some kind of settlement in relation to the business aforesaid, and the said Ives then drew a bill, which was endorsed by said Thompson and your orator Samuel, upon Ford, Markham & Co., payable at ten months, for $5,916 66; which bill was taken by Durrett and the said Barnes in lieu of the bill originally drawn upon N. & J. Dick & Co.; both of which bills, as your orators charge, being founded upon an illegal consideration, were absolutely void, and could not legally have been enforced against your orator Samuel. The said bill upon Ford, Markham & Co., was not paid; but whether the same was protested, and your orator regularly notified of its non-payment, he cannot say, as he has no recollection of ever receiving any notice of protest and non-payment. Some time after this, the defendant Barnes called on your orator Samuel, and wished to know which he should do, and your orator told him to sue Ives immediately upon it without any indulgence, if Ives did not pay it. He then left your orator and went to see Ives, and instead of sueing him, took a deed of trust upon some property of Ives, stipulating at the same time to give Ives further time to pay the debt, as will more fully appear by a reference to said deed of trust, a copy of which will be produced and filed, and when filed will be marked exhibit (A,) and is prayed to be taken as a part of this bill. Your orators state explicitly that this was done without the knowledge, approbation, or consent of your orator Samuel Sample, contrary to his express direction, and in fraud of his rights as a surety, and to which he has never given his assent; but, on the contrary, feels himself greatly aggrieved thereby, and claims that he is totally discharged from liability on said bill, as the said Ives was at that time, as your orators have been informed and believes, abundantly able to have paid said bill had he been sued immediately, but he is now entirely insolvent, and unable to pay.

Some time after this suit was brought against your orator, Samuel Sample, in the circuit court of the United States, for the southern district of Mississippi, as last endorser of said bill. The writ was served upon your orator, Samuel, returnable to the November term, 1838, of said court, at which term the court did not sit, and so no steps of any kind were taken in said suit. After this, and some time before the May term, 1839, of said court, your orator saw the said Ives, and told him he had been sued as aforesaid; the said Ives informed him that he need not be uneasy about it, as he had employed able counsel to attend to it for your orator. After this conversation with Ives, your orator and the said Barnes had a conversation about the suit pending against your orator, Samuel, as aforesaid; and the said Barnes then told your orator, Samuel, that if Ives would confess judgment in the circuit court of Yallabusha county, he would dismiss said suit against your orator, Samuel. Your orator, Samuel, saw said Ives, and told him of defendant's proposition, and Ives expressed the most perfect willingness to confess said judgment, which fact your orator communicated to said Barnes, who then left your orator to get said Ives to confess said judgment, as he said, it being then expressly agreed between your orator, Samuel, and defendant, that if Ives should fail to comply with his

agreement to confess judgment, that defendant should come back to your orator, Samuel, and that both together should proceed to said Ives, and get him to confess said judgment. All this took place shortly before the meeting of said court, in 1839. The said defendant did not return to your orator, Samuel, nor did he ever write to your orator, or give him any information that said Ives would not confess said judgment; but, on the contrary, he left the impression upon your orator's mind that said Ives had done so, until some time during the month of May, and after said court had been in session some time, and he then wrote an evasive letter to your orator, in which he gave your orator the very cheering information that Ives was insolvent, and could not pay the debt. By the foregoing circumstances, to wit, the statement that Ives had employed counsel, and more particularly by the conduct of Barnes, your orator, Samuel, was thrown off his guard, and was induced thereby to take no steps to resist the iniquitous claim of the defendant, and a judgment by default was by these means taken against your orator, Samuel, at said May term of said court, against your orator, Samuel, for the sum of six thousand eight hundred and twenty-eight dollars $\frac{6}{100}$, besides costs of suit. Your orator, Samuel, had no notice of this judgment having gone against him until some time after; being uneasy at the time of Barnes' letter aforesaid, he came to Jackson to see what condition the suit was in, and found it in a judgment as stated. Your orator, Samuel, then spoke to a lawyer, desiring him to have a bill filed to enjoin said judgment, but he was advised by him to bond the case, after which he could still set up all the equities he had against said judgment, which opinion your orators are advised the members of the bar of this State generally entertained at that time.

Your orators further state, that the said Ives had paid a considerable part of said bill of exchange before said judgment for which he had no credit allowed him, owing to the causes aforesaid, and your orators now hold the receipt of said Barnes for $510, dated in April, 1838, and also the receipt of Geo. A. Durrett, dated 16th June, 1838, for $700 00; said Durrett was the trustee under the deed of trust before stated. Acting under the advice aforesaid, your orator, when the execution issued on said judgment came out, gave a forthcoming bond, conditioned to deliver certain property therein specified as having been levied on, to the marshal on the day appointed in said bond. Your orators, Israel W. Pickens and Burwell Scott, were the sureties of your orator, Samuel, on said bond, which on the first Monday in November, 1839, was forfeited by the non-delivery of the property therein mentioned; which bond, so forfeited, by the laws of the land, has the force and effect of a judgment, and on which an execution has issued, and been levied on the personal property, slaves, of your orator, Samuel, and which will be sold without the interposition of your honor. In tender consideration, therefore, and as your orator is remediless at law, and can only have relief in this honorable court, where matters of this kind are properly cognizable, they pray your honor that the said Barnes be made a defendant to this bill, that a subpœna issue, directed, &c., compelling the said Barnes to appear and answer all and singular the allegations in

this bill contained in as full and ample a manner as if they were again repeated, and he interrogated thereto; and particularly that he set forth and answer if he and Durrett did not introduce slaves as merchandise and for sale into this State since the first of May, 1833; if they did not sell them at the time and in the manner charged in this bill to Thomas B. Ives; and if the consideration of the bill of exchange endorsed as aforesaid by your orator, and on which the judgment aforesaid has been obtained, was not as stated by complainants aforesaid. Let him answer if said bill was ever accepted by Ford, Markham & Co.; if it was not, whether it was protested for a refusal to accept, and if your orator ever had notice of such protest and non-acceptance, and let them show such protest; and also let them state if payment of said bill was demanded when it fell due; if so, whether it was protested for non-payment, when it was protested, and where, and by whom, and if notice was ever sent to your orator, Samuel, and how; and let them state the date of said bill, and when it was payable. Let him also exhibit the protest of such non-payment. Let him state if your orator did not direct him to sue Ives; whether he did sue him or not; if so, when he sued him. Let him state if Ives did not give him a deed of trust to secure said debt, and if he did not, in consideration thereof, give Ives an extension of time, and if this was not without your orator, Samuel's, consent, and for how long the extension was given. Let him say if he did not agree to dismiss the suit against your orator, Samuel, upon Ives confessing judgment as stated; if he did not leave your orator to procure such confession, promising to come back and inform your orator if Ives refused, if Ives did refuse; and if he did not fail to come back as he agreed to do; and if he ever wrote or sent word of his refusal till the time stated in the bill. Let him say if the payments alleged in the bill have not been made, and if any credit has been given for them, and, if any more was paid, how much has been paid; and, finally, let him answer fully and at large all the allegations in this bill. And at the final hearing of this cause, your orators pray, that the judgment originally taken against your orator, Samuel, as aforesaid, and all proceedings under it, may be perpetually enjoined; that the bond given by your orator as a forthcoming bond as aforesaid be declared null and void, and be decreed to be cancelled, and that all proceedings on it as a judgment, or bond having the force of a judgment, be perpetually enjoined; that the signature of your orator, Samuel, on said bill of exchange be cancelled, and the contract aforesaid, and the securities taken under the same, as far as your orators are concerned, be declared null and void; and in the mean time your orators pray for an injunction to issue, enjoining and restraining the marshal from proceeding further to levy the execution in his hands, or to act any further in relation to the same, and commanding him to deliver up to your orator, Samuel, the slaves levied on by virtue of said execution; and also enjoining the defendants, his agent, and attorney from any other or further attempt to enforce the collection of the original judgment aforesaid against your orator, Samuel, or to enforce the bond as aforesaid, or the execution issued upon the same against your orators, or from taking any steps in

any way to enforce said judgment or said bond. Your orators pray for such other and further relief as the equity of their case entitles them to ask. And, as in duty bound, they will ever pray, &c.

HAYS, YERGER & FORRESTER,
Solicitors.

STATE OF MISSISSIPPI, *Hinds county.*

This day, Samuel Sample, one of the complainants in the foregoing bill, personally appeared before me, L. V. Dixon, commissioner, &c., and made oath that the matters and things stated in it of his own knowledge are true, and those stated on the information of others he believes to be true.

SAMUEL SAMPLE.

Sworn to and subscribed before me this 16th April, 1840.

L. V. DIXON,
Com'r U. S. C. C., S. D. Miss'i.

We hereby release all errors at law in the foregoing judgment of Barnes vs. Sample, and also all that may be in the matters arising on the forthcoming bond, taken under it this 15th April, 1840.

SAMUEL SAMPLE,
ISRAEL W. PICKENS,
BURWELL SCOTT,
By their attorney in fact, SAML. SAMPLE.

Exhibit A.

(Deed of trust.)

This indenture made this 20th day of June, A. D. 1837, between Thomas B. Ives, of the county of Yallabusha, and State of Mississippi, of the first part, and George A. Durrett, of the county and State aforesaid, of the other part. Whereas the said Thomas B. Ives is indebted to Francis Durrett and Shadrach Barnes, joint partners and negro traders, trading under the name and style of Durrett and Barnes, in the sum of five thousand nine hundred and sixteen dollars $\frac{66}{100}$, by a bill single of that amount, on Ford, Markham & Co., Vicksburg, Mississippi, endorsed by George A. Thompson and Samuel Sample, dated the 5th day of April, 1837, and protested for non-acceptance the same day of April, 1837, being part of the consideration money due and owing by said Ives to said Durrett and Barnes, for a certain lot or parcel of negroes, nineteen in number, sold to him; and the more effectually to secure the payment thereof within a reasonable time, this conveyance is made to the said George A. Durrett, who is by the parties, as by these presents, constituted and appointed trustee thereof. This indenture witnesseth, that the said Thomas B. Ives, as well in consideration of securing the said Durrett and Barnes in the faithful payment of the debt when due, as also the sum of one dollar to him, the said Thomas B. Ives, in hand paid by the said George A. Durrett, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, transferred, assigned, and

set over, and by these presents, do grant, bargain, sell, assign, transfer, and set over, unto the said George A. Durrett, his heirs and assigns, a certain tract or parcel of land, situate, lying, and being in the county of De Soto, and State of Mississippi, being the south half of section twenty-eight, in township three, of range five, west of the meridian of the Chickasaw cession, containing three hundred and twenty acres, more or less; to have and to hold the said land unto the said George A. Durret, his heirs and assigns, to the proper use and behoof of the said George A. Durrett, his heirs and assigns, forever; in trust however, to the intent and purpose, that if the said bill single, for the sum of five thousand nine hundred and sixteen dollars and 66 cents, and all lawful interest thereon is not well and truly paid off and discharged by the 5th of February next, by the said Thomas B. Ives, or some other person, then and in that case, the said Geo. A. Durrett shall, in executing the said trust hereby taken upon himself, advertise the said land for the space of thirty days, by written advertisement at four of the most public places in said county, one of which shall be at the court-house door, of said county; that he will expose to the highest bidder the said land, at the court-house of said county, on a particular day, between the hours of 10 o'clock, a. m., and 3 o'clock, p. m., for ready money, and if the above-mentioned sum of money be still not paid, on the day designated as aforesaid, then the said George A. Durrett, shall proceed to sell the above described lands to the highest bidder for ready money, or so much thereof as will pay the said Durrett and Barnes, their heirs and assigns, said sum, and fully satisfy said debt and accruing interest, together with any lawful and necessary expenses that may be incurred in and concerning the premises, and after said sale to make good and sufficient deed in fee for said land, conveying all the right and title [of] the said Thomas B. Ives, or his heirs or assigns, may have in and to the same; provided, nevertheless, that if the said Thomas B. Ives shall well and truly pay said debt to the said Durrett and Barnes, on their order or assigns, or legal representatives, then this conveyance shall be of none effect and void.

THOS. B. IVES.

J. M. FULLER.

THE STATE OF MISSISSIPPI, *Lauderdale county.*

Personally appeared before me, Davidson M. Rayburn, clerk of the probate court of the county aforesaid, whose name is subscribed to the foregoing deed of trust, who acknowledged that he signed, sealed, and delivered the same, as his act and deed, on the day and year therein mentioned.

Given under my hand and seal of said court, at office, the 23d day of June, A. D. 1837.

[L. S.]

D. M. RAYBURN, *Clerk.*

THE STATE OF MISSISSIPPI, *De Soto county.*

I, Samuel T. Cobb, clerk of the probate court of said county, do certify, that the within deed of trust has been duly recorded in my office, in book A, pages 268, 269, and 270.

Given under my hand and seal of said court, at office, this 28th day of June, 1837. [L. S.]

SAMUEL T. COBB, *Clerk.*
By JOHN C. PRYOR, *D. C.*

To the clerk of the circuit court of the United States for the southern district of Mississippi, ninth circuit of the United States.

Let injunction and subpœna issue as prayed for in the foregoing bill, upon the complainant entering into bond with good security, to be approved by you, in a penalty equal to double the amount of the judgment at law, conditioned according to law.

Given under my hand, at my residence, this 24th day of April, 1840.

S. J. GHOLSON,
Judge U. S. D. C. for so. dist. of Mississippi.

Injunction bond.

UNITED STATES OF AMERICA,
Southern district of Mississippi, sct:

Know all men by these presents, that we, Samuel Sample, Burwell Scott, Israel W. Pickens, Benjamin Griffin, and Daniel M. Dulaney, are held and firmly bound unto Shadrach Barnes in the just and full sum of thirteen thousand six hundred and fifty-seven dollars and twenty-four cents, lawful money of the United States, to be paid to the said Shadrach Barnes, his executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, or assigns; *for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators*, firmly by these presents.

Sealed with our seals, and dated the 30th day of April, A. D. 1840.

The condition of this obligation is such, that whereas the above bound Samuel Sample, Burwell Scott, and Israel W. Pickens, have obtained from the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, an injunction to stay all further proceedings at law in a certain judgment in said court, against the said Samuel Sample and his securities in a forthcoming bond, at the suit of the said Shadrach Barnes, for the sum of $6,228 62, besides interest and cost of suit.

Now, if the said Samuel Sample, Burwell Scott, and Israel W. Pickens, in case the said injunction shall be dissolved, shall well and truly pay all money and costs due, and to become due, to the said Shadrach Barnes, the plaintiff in said judgment, and all such costs and damages as shall be awarded against them, then this obligation to be void, otherwise to remain in full force and virtue.

SAMUEL SAMPLE, [L. S.]
BURWELL SCOTT, [L. S.]
ISRAEL W. PICKENS, [L. S.]
BENJ. GRIFFIN, [L. S.]
DAN'L M. DULANEY. [L. S.]

Sealed and delivered in presence of—
JOHN B. FORRESTER.

STATE OF MISSISSIPPI, *Holmes county.*

Personally appeared before me, Jacob Perkins, an acting justice of the peace for said county, Benjamin Griffin and Daniel M. Dulaney, and made oath that they are severally worth thirteen thousand dollars each, after paying their just debts. BENJ. GRIFFIN,
DAN'L M. DULANEY.

Sworn to and subscribed, this 20th April, 1840, before me,
J. PERKINS,
An acting justice of the peace for said county.

And on the day on which said bill was filed, to wit, on the fifth day of May, A. D. one thousand eight hundred and forty, the following injunction and subpœna were issued from the clerk's office of said court, in the words and figures following, to wit:

Injunction.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

The President of the United States, to Shadrach Barnes, your counsellors, attorneys, and agents, greeting:

Whereas it hath been represented to us, in our circuit court for the ninth circuit and district of Mississippi, in chancery sitting, on the part of Samuel Sample, Israel W. Pickens, and Burwell Scott, complainants, that they have lately exhibited their bill of complaint against you, the said Shadrach Barnes, defendant, to be relieved touching the matters in said bill contained. We, therefore, in consideration of the premises, and of the allegations in said bill contained, strictly enjoin and command you, the said Shadrach Barnes, your counsellors, attorneys, and agents, the marshal of said district, and all others, under the penalty of five hundred dollars, to be levied of your goods and chattels, lands and tenements, to our use, that you absolutely refrain from further proceeding to collect an execution on a certain judgment in our said court, in favor of Shadrach Barnes, against Samuel Sample and sureties on bond, for $6,828 62, with interest and costs, and from any further proceedings against the said complainant touching the matters in said bill contained, until our said court shall make another order to the contrary.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in
[L. S.] May, A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

WM. BURNES, *Clerk.*

Issued the 5th day of May, A. D. 1841.

Subpœna.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

The President of the United States, to Shadrach Barnes, greeting:

For certain causes offered before us, in our circuit court for the dis-

trict of Mississippi, sitting in chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear at our circuit court, in and for said district, sitting in chancery, to be held at the town of Jackson, on the first Monday of November, 1840, to answer to a bill of complaint exhibited against you by Samuel Sample, Israel W. Pickens, and Burwell Scott, complainants in our said court; and further to do and receive what our said court shall consider in this behalf.

Herein fail not, as you will answer to the contrary at your peril.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday in [L. S.] May, A. D. one thousand eight hundred and forty, and in the 64th year of the independence of the United States.

WM. BURNS, *Clerk*.

Issued the 5th day of May, A. D. 1840.

Marshal's return.

Not found.

W. M. GWIN, *Marshal*.
Per J. MAGEE, *Deputy*.

And afterwards, to wit, on the 25th day of May, A. D. one thousand eight hundred and forty, the answer of defendants was filed in this case, in the clerk's office of said court, in the words and figures following, to wit:

Answer.

In chancery. The answer of Shadrach Barnes to the bill of complaint of Samuel Sample, filed in the circuit court of the United States for the southern district of Mississippi, May term, 1840.

This respondent, now and at all times hereafter, saving and reserving to himself all and every benefit of exception which may or can be taken to the manifold errors, uncertainties, and insufficiencies in the said complainant's bill contained, for answer thereto, or unto so much as he is advised it is material for him to answer, saith, that he is advised by his counsel that he is not bound by the law of the land to answer that part of complainant's bill that charges him, together with one Durrett, with introducing slaves into this State, since the first day of May, 1833, contrary to the constitution and laws of the State, and thereby subject this respondent to a criminal prosecution. But this respondent says, that if the consideration of said bill of exchange sued on was illegal, and, in consequence of its having been paid for the purchase of slaves, so introduced into the State, as is charged in the bill, the said complainant had a full opportunity of setting up such defence at law, and having failed to do so, respondent is advised that it is now too late for him to do so.

Respondent admits that, in October, 1836, he sold to one Thomas B. Ives a lot of negroes, for which he took a bill upon N. & J. Dick & Co., endorsed by one Thompson and the complainant; that said bill

was neither accepted or paid; and, in March, 1837, this bill sued on was given in lieu of it. Like its predecessor, however, this bill was also protested, both for non-acceptance and non-payment, and, as respondent believes, the parties were all duly notified thereof. This respondent finding that no reliance was to be placed upon bills of exchange, such as [he] had received from the parties, as no drawers would either accept or pay them, and having sold the negroes principally upon the credit of the complainant, he went, about the last of May, 1837, to see the complainant, to know in what way he should get his money. The complainant then told respondent that he was fearful that Ives either had or would break, and that he, the complainant, would eventually have the money to pay; and, for his own security, he urged upon respondent to see Ives as soon as he could, and try to secure the debt, by getting a deed of trust upon property. In this respondent was governed by the warm and expressed wishes of the complainant; for, as complainant was known to be very solvent, and at all times admitted his liability for the debt, respondent had no other motive in asking for and taking a deed of trust from Ives, than to gratify the complainant by saving him harmless if he could; and respondent positively denies that complainant ever told, instructed, or urged upon him to sue Ives as drawer of said bill.

After leaving complainant this respondent went to see Ives, according to complainant's wishes, and procured him to execute a deed of trust, in order to secure the payment of said bill, but he did not give him a day longer in which to pay the money by any stipulation in said deed, than he had in which to pay it by the bill. The bill was due, according to its tenor and effect, on the 5th—8th February, 1838; according to the terms of the deed, the money was to be paid on the 5th February, 1838, so that no further time was given, as is alleged in the bill; and in proof of this respondent refers to the original deed, herewith filed, marked exhibit A, and prayed to be taken as part of this answer. And respondent states that this deed was taken with the knowledge, approbation, and consent of the complainant, and in pursuance of his express wishes, not in fraud of his rights, and to which he has since that time given his free and hearty assent. As to Ives' liability to pay, had he been sued when the bill fell due, this respondent will state that, from the best of his knowledge, information, and belief, Ives was at that time wholly insolvent, and out of a very large amount of judgments recovered against him during that year, a very small portion of them has been collected; but so few, as your respondent has been informed, (and he examined the clerk's office of the county where Ives lives himself, for the purpose of ascertaining how the facts were,) every execution against Ives, not a few in number, has been returned "nulla bona," and yet remains unsatisfied. So much for the allegation of the solvency of Ives.

This respondent denies, in toto, the statements made by complainant in his bill in reference to the conversation said to have taken place after the commencement of the suit. The only conversation that the

complainant and this respondent ever had about a confession of judgment by Ives, was, as he feels very certain, about the first of December, 1838, as respondent did not see complainant again until some time after the judgment had been recovered. In this conversation the complainant proposed [to] respondent that he should go to Ives and procure him to confess a judgment in the circuit court of Yallabusha county, but respondent distinctly informed him that Ives was notoriously insolvent, and that a judgment against him would be of no service; that the trade had been made almost entirely on the faith of complainant's solvency, and that he must provide for the debt, or words to that effect. The complainant then told respondent that Ives had negroes and should give them up, and requested him to carry a letter written by complainant to Ives upon that subject. Respondent took the letter, carried it to Ives, who informed him that he had nothing and could do nothing, and respondent immediately sat down and wrote to complainant the result of the conference with Ives. But there was no agreement about Ives confessing a judgment; there was no promise to dismiss the suit then pending, nor any single circumstance to lead to the belief that respondent intended returning, under any circumstances, nor was there any thing said or done to throw the complainant off his guard, so that he could not have defended this suit if he had thought proper to have done so. For this conversation took place, as before stated, either five months before the May court, 1839, or after the adjournment of that court; but respondent does not precisely remember at which time; so that respondent denies the whole statement, in every particular, only so far as he has detailed it above. Respondent admits the recovery of the judgment, at May term, 1839, as stated, and contends that if the complainant had any legal defence, it should have been made at that time, particularly as there was no court at November term, 1838. The complainant had some eight months in which to prepare himself for trial. But to show with what grace the complainant comes into this court to ask for relief, respondent states that he was informed both by Ives and the complainant (the last of whom boasted of it before several witnesses) that Ives had paid the debt to him, and that it was then his own debt, which he alone had to pay; that Ives had undertaken to build a turnpike across the Big Black swamp from Big Black river, and had nearly completed the work; that there was due to him about $11,000 on the contract, and that Ives had transferred the whole to complainant, first to pay this debt, and the residue was to be made over to Ives' family, if complainant would think proper to do so; after this complainant went to Ives and informed him that he had done some work in order to complete the turnpike, whereupon Ives gave up to him a $400 note, said to be good, a wagon and two mules, with which the complainant expressed himself fully satisfied, and boasted of the trade he had made; and thus, after receiving the very money that should have been paid over to respondent, undertaking to pay the debt, and expressly making it his own, receiving therefor about double the amount for which he was liable, the complainant now comes into this court to get rid of paying the

debt altogether, upon the ground that he was but a security, and that the bill was given for the purchase of *negrues*, &c. This respondent feels almost ashamed to comment upon such conduct, but will take leave to say that, supposing the contract to have been illegal, the complainant, as a security to the contract, having been paid the full amount by the principal to hand over to respondent, is bound, by every principle of law, equity, justice, morality, or common honesty, to do so.

The payments were made as was stated in the bill, and the marshal was duly instructed to credit them on the execution in the presence of complainant before he filed his bill. The credits amount to $1,220; $500 paid in April, 1838, and $710, 16th June, 1838; all of which is duly credited under the instructions of respondent on the execution; at least he ordered the credits to be entered as before stated. The respondent has not the bill before him, so as to enable him to state the date of it, but it is a part of the records of the court, and he refers to them.

Respondent having herein fully answered all the general allegations as well as the special interrogatories therein propounded in said bill, denies all fraud, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

S. BARNES.

Sworn to and subscribed in open court, May 25th, 1840.

WM. BURNES, *Clerk.*

Agreement.

It is agreed that the replication be filed immediately to the answer; that the depositions be read except as to any objection for incompetency; that either party may, upon giving the opposite party reasonable notice of time and place, proceed to take or state depositions without commission before a justice of the peace, or commissioner of the chancery court of the State.

HAYS, YERGER & FORRESTER,
C. S. TARPLEY.

Replication.

And the said complainant, for replication to the defendant's answer in this behalf filed, says, that the facts and charges contained in his bill filed in this behalf, are true as stated in said bill, and that the statements and charges, stated and made in defendant's answer, are false and untrue; and this he is ready to verify, maintain and prove, in manner aforesaid, as the court shall direct.

HAYS, YERGER & FORRESTER, *Sol's.*

And afterwards, to wit, on the fifth day of November, A. D. 1841, an amended bill was, by leave of court, filed in this case, in the words and figures following, to wit:

To the judges of the circuit court of the United States, sitting in chancery, for the southern district of Mississippi and ninth judicial circuit:

The amended bill of complaint of Samuel Sample and others, to their original bill.

Your orators, by way of amendment to their original bill, beg leave to state, that since the filing of their original bill, and the filing of the answer of defendant, and since the adjournment of your honorable court, at the term at which said answer was filed, they have ascertained the bill on which the original judgment was obtained on the law side of this honorable court, in this cause, was not duly protested according to law, on the day the same fell due for want of payment of said bill, and that due notice was not given thereof; and they pray as in their original bill, &c.

HAYS, YERGER & FORRESTER,
Solicitors for complainants.

UNITED STATES CIRCUIT COURT:

Personally appeared before me, G. W. Miller, deputy clerk, Samuel Sample, who being duly sworn, says that the matters and things stated in the foregoing bill are true, to the best of his knowledge, information, and belief.

SAM'L SAMPLE.

Sworn to and subscribed before me, this 3d day of November, 1841.
GEO. W. MILLER, *D. C.*

And afterwards, to wit, at the January rules, A. D. 1846, of said court, came the complainants, by their solicitors, and entered a rule upon defendants, to answer the amended bill of complainants, or the same to be taken pro confesso.

And afterwards, to wit, at the February rules, A. D. 1846 of said court, came the complainants, by their solicitors, and entered a rule to make pro confesso absolute, no answer having been filed in accordance with the rule entered on the last rule day.

Proof.

THE UNITED STATES, *Southern district of Mississippi:*

On the chancery side of the circuit court, ninth judicial circuit.

SAMUEL SAMPLE, complainant,
vs.
SHADRACH BARNES et al.

Interrogatories to be propounded to Nimrod C. Golding, Leland Noel, Edmund Russell, and Daniel Huntington.

First interrogatory. Are you acquainted with the parties to this suit?

Second interrogatory. Were you present in the spring of 1840, at Lexington, when a conversation took place between Sample, the complainant, and Barnes, the defendant, concerning a certain judgment and execution, in and from the circuit court of the United States of America, for the southern district of Mississippi, in which Barnes and , were

plaintiffs, and Sample, defendant? If so, state all that was said by the said parties, respectively, in the presence of each, and not denied by the other.

Third interrogatory. In that conversation what was said about an agreement that Barnes would go and get Ives, the principal in the bill, to confess judgment in the circuit court of Yalla Busha county?

Fourth interrogatory. What was said in relation to releasing Sample from all liabilities, if Ives would confess said judgment?

Fifth interrogatory. What was the agreement of the parties, if Ives refused to confess said judgment?

Sixth interrogatory. What was said about giving Sample notice, if Ives refused to confess said judgment, and what was said about Barnes coming to see Sample to let him know if Ives refused to confess said judgment?

Seventh interrogatory. What was said about not taking judgment and dismissing the suit at law in this case against Sample, if Ives confessed said judgment?

Eighth interrogatory. When was this agreement made; was it before or after bringing the suit at law; was it before or after the judgment was rendered against Sample?

Ninth interrogatory. What was said about Barnes failing to let Sample know anything about it until after he obtained his judgment against him at law in this case?

Tenth interrogatory. What was said about Barnes acting deceitfully or fraudulently, in not giving Sample notice that he had not arranged the debt with Ives as he has promised, until he got his judgment at law against him?

Eleventh interrogatory. Did Sample allege in the presence of Barnes all the foregoing facts, as set forth in the preceding part of your deposition, to be true, and did Barnes dispute or deny [any] of them? If so, state what one he denied.

Let all the foregoing questions be put to all the witnesses named alone, or as many of said witnesses as may be present.

FORRESTER *for Sample.*

Lemuel G. Lipsey, witness for complainants.

First interrogatory. Are you acquainted with the parties to this suit?

Second interrogatory. Did you ever hear a conversation between them about this matter? If you did, state when, where, and what was said.

Third interrogatory. What did Sample say to Barnes about suing Ives, the principal drawer of the bill?

Fourth interrogatory. When did he urge Barnes to sue?

Fifth interrogatory. Did Sample say any thing to Barnes about taking a mortgage or deed of trust on Ives's property, so as to secure the debt?

Sixth interrogatory. Did Barnes agree and promise Sample to do so? State all you know about it, or heard them say.

Cross interrogatories for all the witnesses.

First cross interrogatory. Are you in any wise related to the complainant Sample, and have you any interest, either direct or indirect, in the event of this suit?

Second cross interrogatory. If you state that you were present and heard any conversation between the parties, then state when and where such conversation took place; what *was* the words used, and by whom; what led to the conversation; how did you happen to be present, and what circumstance so fastened it upon your mind, as to cause you to remember it; who else was present besides yourself, and how did Sample find out the materiality of your statements.

Third cross interrogatory. What conversations have you had with Sample since that time about your knowledge of the matter; has he not attempted to refresh your memory by stating facts that he said occurred at that time?

Fourth [cross] interrogatory. Were you present upon various occasions when Sample's property was offered for sale under the execution in this case? Declare what efforts were made by Sample to defeat the sale, who bid for the property, and in whose possession is it now. Did Sample on any one of these occasions set up any defence, or speak of any hardships or alleged agreement with Barnes in reference to the claim upon Ives?

Fifth cross interrogatory. Did not Sample attempt and succeed in creating very considerable excitement amongst the people, because the property was to be sold for good funds, and did he not propose to pay in Union Bank notes?

Sixth cross interrogatory. Was not Barnes a stranger in Lexington, and had he not through Sample's influence become somewhat odious to the people; did you not hear Sample make threats against him, and would you have considered it safe for Barnes to have bid for Sample's property, when offered for good funds?

Seventh cross interrogatory. Do you know that Barnes heard Sample's statements, and did Barnes directly admit the statements made by Sample, or did he simply remain silent, and make no reply to Sample's allegations? If he did reply, state what he said, as nearly as possible in his own words.

Eighth cross interrogatory. Did you ever hear Sample promise Barnes to pay him his money? If yea, when was it?

Ninth cross interrogatory. Do you know of any other matter material to the interests of Barnes? If yea, declare it fully, and state the whole truth, and nothing but the truth.

TARPLEY, *Attorney.*

THE STATE OF MISSISSIPPI,
Holmes county, to wit:

Depositions of Nimrod C. Golding, Leland Noel, Edmund Purssell, citizens of Holmes county, taken by me, Hugh H. Fultz, a commis-

sioner in and for the southern district of Mississippi, to take affidavits and bail in civil cases, duly appointed by the circuit court of the United States, for the southern district of Mississippi, on this the twenty-eighth and twenty-ninth days of January, in the year of our Lord one thousand eight hundred and forty-one, at my office, in the town of Lexington, in said county, to be used as evidence on the trial of a certain cause now depending on the chancery side of the circuit court of the United States, for the southern district of Mississippi, wherein Samuel Sample is complainant, and Shadrach Barnes et al. are defendants.

The said Nimrod C. Golding, being first cautioned and solemnly sworn, deposed as follows, to wit:

Interrogatory first. The deponent answers the first annexed interrogatory propounded to him and others, in the affirmative.

Interrogatory second. For answer to the second annexed interrogatory deponent says, that he was present at the time and place specified in said interrogatory, and heard the conversation mentioned in said interrogatory, the sum of which was this: When Sample's property was about to be offered for sale, he made a statement to this effect, that he had sent to obtain an injunction in the case, and owing to the judge being absent, he did not get, but that there was no doubt that it was granted at the time, and that he claimed a right of defence in the case, which he had not had. Barnes asked Sample why he did not put in his defence before he obtained his judgment against him; to which Sample observed, that he well knew the reason, if he was disposed to state it. Sample then stated that it was from his deceptions and fraudulent course that he had pursued towards him; and then stated that he and Barnes had a conversation a short time before court, and the said Barnes said, that if Ives, the drawer of the obligation would confess judgment in Yallabusha county, that he would release the said Sample from the obligation; the said Sample said he saw [Ives] afterwards, and stated to him Barnes' proposition, to which Ives was willing to agree; he said he then saw Barnes at this place, and stated to him that he had seen Ives, and that Ives was willing to confess judgment, and when they parted the understanding was that said Barnes was to go and see Ives, and if Ives refused to confess judgment, he was to return immediately, and let the said Sample know it, and the said Sample was to go with Barnes and urge Ives to do it; as the said Sample did not hear from the said Barnes, he was satisfied that the arrangement was made; this the said Barnes did not pretend to deny, but observed that he had written to the said Sample a letter to let him know what to depend upon, to which the said Sample said he did, but was cautious not to write until after he had obtained judgment against him by default; to which said Barnes observed, that he did not recollect when the letter was written, but Sample ought to know, as he expected he had the letter; the said Sample replied that he did know, and that he then had the letter at home; the said Barnes spoke of the situation of his family, and if he was disappointed in getting this money, that his property would be sacrificed; this conversation was an appeal to the people generally.

Interrogatories 3, 4, 5, and 6. For answer to the third, fourth, fifth, and sixth annexed interrogatories deponent refers to his answer to the second annexed interrogatory.

Interrogatory seventh. For answer to the seventh annexed interrogatory deponent says, he does not recollect that any thing was said relative to not taking judgment, or dismissing the suit against Sample, if Ives confessed judgment.

Interrogatory eighth. For answer to the eighth annexed interrogatory deponent says, that he inferred from the conversation, detailed in his answer to the second annexed interrogatory, that the agreement was made before judgment was rendered against Sample.

Interrogatory ninth. For answer to the ninth annexed interrogatory deponent says, he knows nothing more relative thereto than what is detailed in his answer to the second annexed interrogatory.

Interrogatory tenth. For answer to the tenth annexed interrogatory deponent makes the same answer as made to the ninth annexed interrogatory.

Interrogatory eleventh. For answer to the eleventh annexed interrogatory deponent says, that the said Sample did allege the facts set forth in his answers to the defendant's foregoing interrogatories to be true; and that the said Barnes did not deny any of the facts farther than what is set forth in the deponent's answers to the foregoing interrogatories.

Cross interrogatory 1st. For answer to the first annexed cross interrogatory deponent [says,] the said Nimrod C. Golding answers in the negative.

Cross interrogatory 2d. For answer to the second annexed cross interrogatory deponent says, he was present when the conversation took place; it was at the town of Lexington, in Holmes county, in the spring of 1840. He knows nothing more than what is stated in his answer to the second annexed interrogatory. There was some property to be offered for sale at the court-house, and he was there in the crowd. The cause of recollecting the conversation, was that Sample told him to recollect it, and he wrote it down as near *as near* as recollected.

Cross interrogatory 3d. For answer to the third annexed cross interrogatory deponent says, he has heard Sample speak of the conversation, and that Sample has asked him if he did recollect when he, Sample, would be speaking of the matter to other persons.

Cross interrogatory 4th. For answer to the fourth annexed cross interrogatory deponent says, he was present on one occasion, and that Sample made no effort to defeat the sale. That Huntington Barnes himself and others bid for the property; that the property is in Sample's possession; that Sample did speak of hardship as related in the deponent's answer to the second annexed interrogatory.

Cross interrogatory 5. For answer to the fifth annexed cross interrogatory, deponent answers in the negative.

Cross interrogatory 6. For answer to the sixth annexed cross inter-

rogatory, deponent says he does not know whether Barnes is a stranger or not in Lexington, nor does he know that he had become odious through Sample's influence; that he did not hear Sample make threats against Barnes, and that he did consider it safe for Barnes to bid for the property, as he did bid for the same, a part of which was offered for good funds.

Cross interrogatory 7. For answer to the seventh cross interrogatory, deponent says that Barnes heard the statements made by Sample, and that he cannot better answer this cross interrogatory than by referring to his answer to the second annexed interrogatory, and to which he does refer.

Cross interrogatory 8. For answer to the eighth annexed cross interrogatory deponent answers in the negative.

Cross interrogatory 9. Deponent answers the ninth cross interrogatory in the negative, and hereunto subscribes his name.

H. C. GOLDING.

The said Leland Noel, being first duly cautioned, and solemnly sworn, deposed as follows, to wit:

Interrogatory 1. Deponent answers the first annexed interrogatory, propounded to himself and others, in the affirmative.

Interrogatory 2. For answer to the second annexed interrogatory deponent says, that when Doctor Sample's property was about to be offered for sale under Barnes' execution against him, at Lexington, some time in the spring of 1840, at which time, and place, and occasion, deponent says he was present, he, Sample, said, in the hearing of the people then assembled, and in the hearing of Barnes, that he, Sample, did not consider himself legally or morally bound to pay the debt his property was then about to be sold for; that he had sent for an injunction in the case, but owing to the absence of the judge he did not obtain it at the time, but he had no doubt an injunction had been granted before that time; that he, Sample, said he claimed a right of defence in that case, which he had not been at liberty to set up on the trial; that Barnes asked Doctor Sample why he did not put in his defence before he obtained judgment against him; that Sample replied that he well knew the reason if he was disposed to state it; that Sample further stated that it was from his, the said Barnes', deceptive and fraudulent course pursued towards him that he had not done so; this deponent further states that Sample asked Barnes if he did not recollect the conversation between them some time before in Lexington, and if it was not agreed by him, Barnes, in that conversation, that if Ives would confess judgment in Yallabusha county, that he, Barnes, would release him, Sample, from the obligation, and that Sample said the understanding between himself and Barnes was, that Barnes was to go and see Ives, and if Ives refused to confess judgment, he was to let him, Sample, know. This statement the deponent says Barnes did not deny, but observed that he had written the said Sample a letter to let him know what to depend upon; that Sample said he had done so,

but was cautious not to write before he had obtained his judgment against him, Sample, by default; that the said Barnes then observed, you ought to know be-t, you have the letter. The deponent further states, that much was said other than the above, at the time, by Sample and Barnes, the words or substance of which related in a great degree to matters foreign to the controversy now pending between them.

Interrogatories 3, 4, and 5. For answer to the third, fourth, and fifth interrogatories annexed deponent says, he has said all he knows relative thereto in his answer to the second annexed interrogatory.

Interrogatory 6. For answer to the sixth annexed interrogatory deponent says, he does not recollect that it was said in the conversation between Sample and Barnes, that Barnes was to come and let Sample know if Ives refused to confess judgment; he says his recollection of the matter is, that Barnes was to let Sample know.

Interrogatory 7. Deponent says in answer to the seventh annexed interrogatory, that all he knows in relation to said interrogatory, he has set forth in his answer to the second annexed interrogatory.

Interrogatory 8. For answer to the eighth annexed interrogatory deponent says, from the conversation mentioned in his answer to the second annexed interrogatory, he gathered that the agreement between Barnes and Sample relative to the release of Sample, was made before judgment was had against Sample.

Interrogatories 9, 10. Deponent makes the same answer to interrogatories ninth and tenth annexed, as he does to the seventh annexed interrogatory.

Interrogatory 11. For answer to the eleventh annexed interrogatory deponent says, that Sample did allege the facts set forth in the foregoing depositions in the presence of Barnes, and that Barnes did not deny them further than is set forth in his answers to second annexed interrogatory.

Cross interrogatory 1st. Deponent answers the first annexed cross interrogatory propounded to him, Leland Noel, and others, in the negative.

Cross interrogatory 2d. For answer to the second cross interrogatory annexed deponent says, the conversation took place in the spring of the year 1840, before *before* the court-house door, in the town of Lexington; that the words used in said conversation, so far as he recollects them, are repeated in his answer to the second annexed interrogatory; that the conversation commenced when the property of Sample was offered for sale by the deputy marshal; that he came to Lexington to attend the sale of the property at Lexington, to be made on that day; that the request of Sample on that day to recollect the conversation was the circumstance that fastened it on his mind and caused him to remember it; that there were quite a number of persons present, citizens of the county; that immediately after the conversation between Sample and Barnes, he, in a conversation with Sample, repeated many things said by Barnes and Sample, and that Sample then requested him to remember the same.

Cross interrogatory 3d. For answer to the third annexed cross interrogatory deponent says, that about a week since, whilst on his way to this place, in company with several of his neighbors, among whom was Sample, that Sample spoke of some of the facts which occurred at the time, but that Sample's conversation on that occasion was not more addressed to himself than to the other persons who were in company with him; he thinks that Sample on other occasions mentioned the same subject in company in which was deponent.

Cross interrogatory 4th. For answer to the fourth annexed cross interrogatory deponent says, that he was present on the day that Sample's property was offered for sale under the execution; and that the said property was offered several times during the day for sale and sold, and the bids as often forfeited; and that finally the property was left in the possession of Sample, who removed it home, where he believes it is still to be found in Sample's possession; that at one of the sales of said property Daniel Huntington became the purchaser, and in two or three hours afterwards forfeited his bid, when the property was again offered for sale by the deputy marshal, and Nimrod C. Golding became the purchaser, who likewise forfeited his bid; that at the said sale, in addition to the two above named gentlemen, Barnes and a good many other persons bid for the property; that he does not know of any other efforts on the part of Sample to defeat the sale, except what the foregoing state of facts would manifest, which facts, he says, Sample told *told* the defendant were brought about by his, Sample's, instrumentality; that Sample did on the day of sale speak of hardship and alleged agreement with Barnes, in reference to the claim upon Ives, the substance of which speech the deponent says he has before spoken of in his answer to the second annexed interrogatory.

Cross interrogatory 5th. For answer to the fifth annexed cross interrogatory deponent says, that Sample did not create a very considerable excitement among the people, because his property was offered for good funds, and that he did not hear Sample propose in Union Bank notes, but he says he heard Barnes consulting with some gentlemen about the propriety of receiving such money.

Cross interrogatory 6th. For answer to cross interrogatory the sixth annexed deponent says, that Barnes is not a stranger in Lexington, nor does he believe he, Barnes, had become odious through Sample's influence; that he did not hear Sample make any threats against Barnes, and that he would have considered it safe for Barnes to bid for Sample's property, when offered for sale for good funds, as one negro of Sample's was offered for good funds to pay the costs of suit, for which negro Barnes bid.

Cross interrogatory 7th. For answer to the seventh annexed cross interrogatory deponent says, that Barnes did not hear Sample's statements as set forth in the defendant's answer to the second annexed interrogatory, to which answer the deponent refers for answer to the remainder of this cross interrogatory.

Cross interrogatory 8th. Deponent says for answer to the eighth an-

nexed cross interrogatory, that he did not hear Sample promise to pay Barnes his money.

Cross interrogatory 9th. For answer to the ninth annexed cross interrogatory deponent says, that he has disclosed all he knows in relation to the matter in the foregoing answers to the interrogatories and cross interrogatories, and that he knows nothing farther material to the interests of Barnes, and hereunto subscribes his name.

LELAND NOEL.

The said Edmund Purssell being first duly cautioned and solemnly sworn, deposed as follows, to wit:

Interrogatory 1st. Deponent answers the first annexed interrogatory, propounded to himself and others, in the affirmative.

Interrogatory 2d. For answer to the second annexed interrogatory deponent says, he was present and was the officer who had the control of the execution, and at the time he was about to offer Sample's negroes for sale, a conversation took place between Sample and Barnes; not being interested deponent says he does not recollect the precise words used by them, but as well as he recollects the following is the substance of what was said by them on that occasion: Sample, addressing himself to the persons then assembled, and also to Barnes, said he did not consider himself bound to pay the debt, and that Barnes obtained his judgment against him by deception; that Sample stated, also, that he had sent for an injunction in the case, but had not been able to obtain it on account of the absence of the judge, hut that he had no doubt that one had been granted; that all he desired was a fair trial in the case, which he had not had; that Sample then pointed out to Barnes a place on the public square in the town of Lexington, where they, Barnes and Sample, held a conversation relative to the debt before judgment, at which time Sample stated that Barnes promised him that if the principal in the debt, which Sample said was Ives, would acknowledge judgment in Yallabusha county, he, Barnes, would dismiss the suit against him, alluding to the judgment which his property was then about to be sold under; and if the said Ives refused to do so, he, the said Barnes, would let him know immediately; which Sample said Barnes did not do, and which led him to the belief that all was settled; that Barnes asked Sample if he did not get a letter from him on that business, which Barnes contended that Sample had, and then had it in his possession, and asked Sample to show the letter, which Sample did not do, but said he received it after judgment was had.

Interrogatories 3, 4, 5, 6, 7, 8, 9, and 10. For answer to the third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth annexed interrogatories deponent says he can state nothing further in answer to these interrogatories than he has already stated in his answer to the second annexed interrogatory.

Interrogatory 11th. For answer to the eleventh annexed interrogatory deponent says, that Sample did allege in the presence of Barnes, the facts set forth in his foregoing depositions to be true, and that Barnes

did not dispute or deny them, farther than is set forth in his answer to the second annexed interrogatory, nor did he directly admit them, except as above stated.

Cross interrogatory 1st. Deponent, Edmund Purssell, answers the first annexed cross interrogatory in the affirmative.

Cross interrogatory 2d. For answer to the second annexed cross interrogatory deponent says, that he was present and heard the conversation between Sample and Barnes, that it took place in the month of April, 1840, in the town of Lexington; that the words used by them he does not recollect, but that he has given the substance of the conversation, as well as recollected, in his answer to the second annexed interrogatory; that he presumes that it was the fact of Sample's property being about to be sold that gave rise to the conversation; that he was present as the officer to conduct said sale, acting as deputy marshal; that it was repeated conversations with other persons since that time, relative to the transaction, that fastened it upon his memory; that many other persons were present at the time; that he does not know how Sample found out the materiality of his statement, unless he came to that conclusion from his, Sample's, knowledge of the presence of this deponent, at the time and place.

Cross interrogatory 3d. For answer to the third cross interrogatory annexed deponent says, that he has had several conversations with Sample relative to the matter, and that Sample has attempted to refresh his memory by stating facts which he, Sample, said occurred at that time.

Cross interrogatory 4th. For answer to the fourth annexed cross interrogatory deponent says, that he was present on the day Sample's property was offered for sale, and that the same property was offered and sold twice on the same day, and that the purchasers forfeited their bids on both occasions; that the property is now, as this deponent believes, in the possession of Sample; that Daniel Huntington and Nimrod C. Golding were the purchasers, and that others also bid for the property; that he knows of no efforts made on the part of Sample to defeat the sale, except that he, Sample, said to the persons then assembled that the debt was unjust, and that he heard Sample say since the sale that he, Sample, was instrumental in having the property bid off, and the bidder afterwards forfeiting his bid; that Sample did speak of hardship, and alleged agreement with Barnes in reference to the claim against Ives.

Cross interrogatory 5th. For answer to the fifth annexed cross interrogatory deponent says, that Sample did not succeed in creating excitement amongst the people because the property was to be sold for good funds; that the whole of said property was not offered for sale for good funds, but only a sufficiency to pay the costs of the suit; the remainder being offered and bid off as above stated for Union Bank money; that Sample did not propose to pay in Union Bank notes, but refused to do so.

Cross interrogatory 6th. For answer to the sixth annexed cross interrogatory deponent says, that he does not consider Barnes a stranger

in Lexington, though he is not a citizen; that Barnes had not become odious to the people through Sample's influence, and that he did not hear Sample make any threats against Barnes; that he would not have considered it safe for Barnes to have bid for Sample's property if it had all been offered for sale for good funds, though not from Sample's influence, but from previous resolutions entered into amongst the citizens of the county before Sample's property was levied on.

Cross interrogatory 7th. For answer to the seventh annexed cross interrogatory deponent says, that Barnes did hear the statements of Sample; that Barnes did not directly admit the statement made by Sample, but cited Sample to the letter before mentioned, and that he does not recollect the words used by Barnes.

Cross interrogatory 8th. Deponent answers the eighth annexed cross interrogatory in the negative.

Cross interrogatory 9th. For answer to the ninth annexed cross interrogatory deponent says, he knows of nothing more material to the interest of Barnes; and hereunto subscribes his name.

E. PURSSELL. [SEAL.]

I, Hugh H. Fultz, a commissioner to take affidavits and bail in civil cases, duly commissioned as such by the circuit court of the United States, for the southern district of the State of Mississippi, do hereby certify, that Nimrod C. Golding, Leland Noel, and Edmund Purssell, were by me sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions by them subscribed was reduced to writing by me, and taken at the time and place set forth in the caption hereof.

In testimony whereof I have hereunto set my hand and affixed my seal this 29th day of January, A. D. 1841.

H. H. FULTZ, [SEAL.]
Commissioner.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

SAMUEL SAMPLE et al.
vs.
SHADRACH BARNES.

Interrogatories to be propounded to Thomas B. Ives, a witness on the part of the complainants.

Interrogatory 1st. Are you acquainted with the parties to this suit?

Interrogatory 2d. Do you know who were the parties to the bill sued on at law in this case, and what was the consideration of said bill; explain the whole matter from the beginning; were either of the bills protested and notice given to the parties?

Interrogatory 3d. Who was drawer and who endorser of said bill?

Interrogatory 4th. When were said negroes introduced into this State; and for what purpose were they brought, and by whom, and from what

State? State all you heard defendant say upon the subject about the time of said sale.

Interrogatory 5th. Who was the purchaser in the case; how many negroes were purchased, and what was the price agreed to be given for them?

Interrogatory 6th. Was there any new contract made between you and defendant, by which new security was given and the time of payment extended? Explain all you know on this subject.

Interrogatory 7th. State what you know about counsel having been employed to defend this suit at law, and what information was given to complainant on that subject.

Interrogatory 8th. State the nature of the security you gave to complainant to indemnify him as your security from paying the debt.

Interrogatory 9th. Did not complainant finish the turnpike himself; and what was the value of the work thus done by him on the turnpike?

Interrogatory 10th. What has he received for said labor, and how much has he received?

Interrogatory 11th. Is the amount he received sufficient to pay him for his labors?

Interrogatory 12th. What is the prospect of his getting any more?

Interrogatory 13th. Was not the contract, through mistake, for Brandon and Grenada money; and is not that entirely worthless?

Interrogatory 14th. Are not the parties insolvent, or much embarrassed; and are they not resisting the payment of the claim on the ground that nothing was agreed to be paid but Brandon and Grenada bank notes? State all you know about it.

Interrogatory 15th. State all you know about any other matter in controversy between the parties in this case.

JACKSON CITY, *March 8th*, 1841.

C. S. TARPLEY, ESQ.

DR. SIR: Enclosed you will find a set of interrogatories, to which I wish you to file your cross interrogatories, and enclose them back to me. These are the interrogatories of which I spoke.

Very respectfully, yours, &c.

JOHN B. FORRESTER.

The defendant, by his counsel, excepts to all illegal questions, and will avail himself of such exceptions upon the trial of this case.

1st cross interrogatory. If you state any fact in answer to the foregoing interrogatories, then state if such fact is derived from your own knowledge, or from information from others; if from your own knowledge, then state when and where such facts transpired, who was present besides yourself, and what circumstances led to them; if from information, from whom did you derive such information; who were present and heard the same besides yourself.

2d cross interrogatory. State if you have not had various conversations with complainant, Sample, about this matter, and if most of your impressions were not derived from such circumstances.

3d cross interrogatory. If you state anything that defendant, Barnes, stated in reference to the matter, then state all that he said in that conversation about the debt, and the way he had been treated by Sample.

4th [cross] interrogatory. If you should state that the consideration of the bill was for negroes introduced into this State, then declare how you became acquainted with the facts; and declare particularly, if you know, if the negroes were brought into the State in consequence of a previous agreement between the parties.

5th cross interrogatory. Where are those negroes now; has not Sample kept the possession and use of them ever since the purchase; and has he ever offered to return them?

5th [cross] interrogatory. Have you not heard Sample promise to pay this money since the recovery of the judgment in this case; do you know that he ever objected to the payment until his negroes were levied upon and offered for sale?

6th cross interrogatory. If you state that any contract was made between Barnes and yourself, then declare if such contract was in writing. If so, produce it, or a copy of it, or account for its absence; and declare, further, how much of that contract was performed on your part.

7th cross interrogatory. If you know of any fact, not herein inquired into, that would tend to the benefit of the defendant, then state it fully, and declare the whole truth.

TARPLEY, *Attorney.*

Thomas B. Ives, of lawful age, being first duly cautioned and solemnly sworn the truth to speak, deposeth and saith, in answer to the first and succeeding of the annexed interrogatories propounded to him by the complainant in the case named in the annexed interrogatories:

In answer to the first interrogatory deponent says: He is well acquainted with the parties.

In answer to the second interrogatory deponent says: He does know the parties to said bill, and also knows that the consideration thereof was for negroes; he further states, that he bought nineteen negroes in October, 1836, of Durrett and Barnes, for which he gave a draft of ten thousand dollars on N. and J. Dick & Co., of New Orleans, with an understanding with the said Barnes that it was not to be protested; but that, in case the house refused to accept, he was to return said bill, and the said deponent was to make other arrangements. Accordingly, the bill was returned not protested, and the said deponent made arrangements by which the said Barnes received five thousand dollars cash, and gave another bill, including interest at 12 per cent. per annum, which is the bill now in controversy, and which has never been protested to my knowledge.

In answer to the 3d interrogatory deponent says: He was drawer, and Geo. A. Thompson and Samuel Sample endorsers, to both bills.

In answer to 4th interrogatory deponent says: The negroes, as he heard Durrett, one of the partners, say when he purchased them, were brought from Alabama a few days previous to the purchase, and that they were brought to sell; that he would not part the families.

In answer to the 5th interrogatory deponent says: He was the purchaser; that there were nineteen negroes, and ten thousand dollars was to be given.

In answer to the 6th interrogatory deponent says: That, some time after the bill was given, Barnes suggested to him to give a deed of trust on property, and he would extend the time; that he did execute a deed of trust on lands, as he thought, sufficient to secure the debt, which was done without the knowledge of Sample, which has since been sold at a sacrifice under said deed of trust, and the amount receipted for.

In answer to the 7th interrogatory deponent says: He employed, as he thought, Pryor Lea, esq., to defend the said suit, [of] which fact he informed complainant; but Mr. Lea, as deponent understood him, did not consider himself employed, consequently did not attend to it.

In answer to the eighth interrogatory deponent says: That he has given no security to complainant; that he transferred a contract he had, to make a turnpike at Bole's ferry, in order that the work might be completed. That he was unable to finish the work himself, and thought that by doing this, that at some day something might be realized; which contract has been completed by complainant, as deponent understands, at heavy expense, and for which said complainant has never received any thing.

In answer to the ninth interrogatory deponent says: The complainant did finish the turnpike, but the worth of doing so, this deponent does not know, nor has he as yet sought to know.

In answer to the tenth interrogatory deponent says: The complainant has received nothing from him, except two very small mules and a note of J. Wharton for about four hundred dollars, which was to assist him in the completion of the work.

In answer to the eleventh interrogatory deponent says: The amount he received he considers but a small part of the cost to finish the work.

In answer to the 12th interrogatory deponent says: He does not know what the proposal is of getting any thing for the turnpike, as the parties are defending, and refuses to pay any thing but Grenada and Brandon money, which is worthless at present.

In answer to the 13th interrogatory deponent says: That the contract was for Brandon and Grenada money or their equivalent, which constituted the currency in north Mississippi at that time; but it was perfectly understood that he was to have such money as would pay debts or executions.

In answer to the 14th interrogatory deponent says: The parties are said to be insolvent, and they are resisting the payment, except with Brandon and Grenada money.

In answer to the 15th interrogatory deponent says: He knew nothing that he now recollects but what he has already stated.

In answer to the 1st cross interrogatory deponent says: That the facts stated in his answer are from his own knowledge; that he purchased the negroes in presence of G. A. Thompson, but recollects no other person at this time; that he has received no information, except from

Durrett and Barnes, in relation to the matter; on the main road and at Coffeeville and Lexington, said deponent had various conversations with Barnes on the subject of the amount due him.

In answer to the 2d cross interrogatory deponent says: He talked with Sample frequently about the matter, but that he received no information from him in relation thereto.

In answer to the 3d cross interrogatory deponent says: He heard Barnes say Sample was trying to keep him out of the money, and insisted that he had paid Sample, which deponent denied. That in relation to the turnpike, deponent said he had transferred it to him in order that it might be completed, as he was unable to do it himself, thinking that some time something might be realized.

In answer to the 4th cross interrogatory deponent says: He gave the bill for negroes, and that they were introduced by Durrett and Barnes, as he was informed, first by Durrett and then by Barnes, and no previous arrangement existed to his knowledge.

In answer to the 5th cross interrogatory deponent says: The negroes are scattered; some in Yallabusha; some dead; and some he believes in Texas; that the complainant, Sample, never saw the negroes, only as they passed by him the day the deponent bought them, nor has he ever had them in his possession, nor received any benefit from them whatever.

In answer to the 5th cross interrogatory deponent says: He never heard Sample agree to pay any thing, but always refused to do so.

In answer to the 6th cross interrogatory deponent says: Barnes, in taking a deed of trust, agreed to extend the time, which was not committed to writing, and never sued deponent, but sued Sample only; the whole contract was performed on his part.

In answer to the 7th cross interrogatory deponent says: He knows of no fact but what has been inquired into, and hereunto signs his name.

THOS. B. IVES.

I, Hugh H. Fultz, commissioner for taking affidavits and bail in civil cases, duly appointed by the circuit court of the United States, for the southern district of Mississippi, do hereby certify, that the answers of Thos. B. Ives to the annexed interrogatories were taken by me and reduced to writing by the said Ives, being first solemnly sworn to speak the truth. Given under my hand and seal, this 30th day of April, A. D. 1841.

H. H. FULTZ. [SEAL.]

Be it remembered, that on the first day of October, 1841, I, H. H. Fultz, United States commissioner, appointed under and by virtue of the act of Congress, in such case made and provided, have on this day called and caused to come before me, at the clerk's office of the circuit court of Holmes county, in Lexington, in the State of Mississippi, Benjamin Griffin and others, witnesses on the part of the defendant, for the purpose of taking their depositions, to be read as evidence in a certain suit now pending and undetermined in the circuit court of the United

States, for the southern district of Mississippi, on the chancery side of said court, wherein Samuel Sample is complainant, and Shadrach Barnes is defendant. The said witness, Benjamin Griffin, having been by me first cautioned and duly sworn to testify the whole truth, upon his oath does depose and say as follows, to wit:

Question 1st to Benj. Griffin, by defendant Barnes. Do you know the parties to this cause, or either of them?

Answer. I know both of them personally.

2d question by same. Did you or did you not have a conversation with Samuel Sample on the subject of his having purchased the turnpike over Big Black swamp, beginning at Boll's ferry, from Thomas B. Ives? And if yea, state the substance of what was said by Sample.

To the second question propounded by the defendant, deponent answers in the negative.

3d question by same. State expressly whether Sample, in a conversation with you, did or did not claim possession of said turnpike, and also that he derived that claim from Thos. B. Ives.

To the first part of the third foregoing question, propounded by the defendant, Barnes, deponent answers in the affirmative; and to the latter part of said question he answers in the negative.

4th question by defendant Barnes. Did or did not Sample express himself pleased with the prospect of the turnpike being profitable to him, and say the tolls would be worth some $3,000 or $4,000 annually?

To the fourth foregoing question propounded by the said defendant, the deponent says, that he has understood that Sample used such language, but whether he learned it from Sample or other persons, he does not distinctly recollect.

5th question by defendant Barnes. Did or did not Sample tell you, he had filed a bill for possession of the said turnpike, and if he did not in that conversation claim all the benefits to be derived for building the same?

To the first part of the fifth foregoing question propounded by defendant, the deponent answers that he did. To the second part of said question the deponent says, that he understood Sample to say that he did.

6th question by defendant Barnes. State, as near as possible, what time the above named conversation took place.

To the sixth foregoing question, propounded by defendant Barnes, the deponent says that it was some time in the winter of 1839 and 1840; and further this deponent saith not.

BENJ. GRIFFIN.

I, H. H. Fultz, United States commissioner, appointed as aforesaid, do hereby certify, that the foregoing depositions were taken, subscribed, and sworn to, before me, at the time and place specified in the caption; that the complainant was duly notified to attend and cross examine the witness, if he should think proper so to do. That the attorney of the

said complainant, Robert Cook, esquire ——— but declined cross examining the said witness, and that the said depositions were written by myself. I do further certify, that I am not counsel, agent, or attorney of either of the parties mentioned above in this suit. Given under my hand and seal, this 1st day of October, 1841.

H. H. FULTZ. [SEAL.]

SAMUEL SAMPLE, or his attorney:

Take notice, that on the 5th day of October inst., I shall attend at the dwelling-house of Samuel Shackleford, in Holmes county, for the purpose of taking the deposition of said Samuel Shackleford, to be read in evidence in a certain suit now pending and undetermined in the circuit court of the United States, for the southern district of Mississippi, wherein you are complainant and I am defendant; at which time and place you may attend and cross examine if you think proper.

Oct. 2d, 1841. SHADRACH BARNES.

Be it remembered, that on this the fifth day of October, 1841, I, Hugh H. Fultz, United States commissioner, appointed under and by virtue of the act of Congress in such case made and provided, have on this day called and caused to come before me, at the residence of Samuel D. Shackleford, in the county of Holmes, in the State of Mississippi, Samuel D. Shackleford, a witness on the part of the defendant, for the purpose of taking his deposition, to be read as evidence in a certain suit now pending and undetermined in the circuit court of the United States, for the southern district of Mississippi, on the chancery side of said court, wherein Samuel Sample is complainant and Shadrach Barnes defendant. The said witness having been by me first cautioned and duly sworn to testify the truth, upon his oath does depose and say as follows, to wit:

1st question by defendant Barnes to said witness. Do you know the parties to this cause?

Answer. I do.

2d question by same. Did you or did you not have a conversation with Samuel Sample on the subject of his having purchased the turnpike over Big Black swamp, being at Boll's ferry, from Thomas B. Ives, or his interest for building the same? And if so, state the substance of what was said by Sample.

Answer. I have never heard S. Sample say that he had purchased said turnpike, or Ives's interest for building. I have had a number of conversations with Sample, but to the best of my recollection I can fix on nothing that would go to say he had made such a purchase. I must add that I have heard Sample say he had a transfer of T. B. Ives's contract or interest, to secure him, if possible, in cases where he was security for Ives. I have heard Sample say said transfer was only intended to secure him in case the suits should be determined against him.

3d question by same. State particularly whether Sample did or did

not tell you that he was liable as overseer for Thomas B. Ives to the said Barnes, which he expected him to pay, and that he, Sample, did secure a transfer of Ives's claim for building the turnpike to secure him for said liability?

Answer. I have heard Sample say he was security or endorser, or liable in a case in which Barnes was plaintiff, which he, Sample, was defending in the circuit court of the United States, but I do not recollect of hearing him say he would have to pay, but, on the contrary, that he thought he would be released from said debt. In answer to the last part of the question I have to say, that said transfer was to save him as far as possible, should the suit be decided against him, (Sample.)

4th question by same. Did or did not Sample, previous to the existence of this cause, tell you that the said Barnes had a judgment against him, in the district court of the United States, for the southern district of Mississippi, and that the above named transfer was made previous to his injunction in this cause?

Answer. I heard Sample say that said Barnes had a judgment against him prior to his property having been offered for sale at Lexington, which I think was about the time he obtained an injunction; and I recollect of his speaking of the transfer of the contract of T. B. Ives prior to the getting of said injunction.

5th question. Did or did you not hear Sample express himself pleased at the prospect of the turnpike being profitable to him? And if so, state what he said in relation thereto; and if he stated what it was worth annually, state the amount.

Answer. I have heard Sample say the turnpike would be profitable, and that he would be glad or pleased to own the property, and that he stood a probable chance of getting it, or to pay for building the turnpike. I do not recollect of his saying what it would be worth annually.

6th question by same. State as near as possible the time the above named conversation took place.

Answer. I have heard him say as much at different times, but particularly about the time of an investigation, or taking of interrogatories at Boll's ferry, in the turnpike case, Sample vs. Turnpike company; the precise time I cannot recollect.

And upon cross examination by the complainant, Samuel Sample, the said witness, Samuel D. Shackleford, doth depose as follows, to wit:

1st question by said Sample. State whether or not you ever heard Sample say that there ever was any understanding between him and Ives, that he should pay this debt to Barnes.

Answer. I never have.

2d question. State whether or not you ever heard Sample say that Ives had paid him to pay this debt.

Answer. I do not recollect of hearing Sample say any thing of the kind.

3d question. State what you know of the solvency of the proprietors of the turnpike, whose obligation was transferred by the said Ives to Sample.

Answer. As far as I know, I should doubt whether any thing could be collected from them.

4th question. State what kind of funds this obligation was to be discharged with; and whether or not these monèys are not entirely worthless.

Answer. I have understood from two of the proprietors of said turnpike and Sample, that the contract was to be paid in Grenada and Brandon money, which is worth about one cent in the dollar.

5th question. State whether or not it is doubtful about Sample's obtaining anything on that obligation.

Answer. I consider it more than doubtful.

6th question. State whether or not you ever heard Sample say that it had cost him several thousand dollars to complete the turnpike, and he was fearful he would not be able to get it again.

Answer. I have heard S. Sample say, that he had expended several thousand dollars on the turnpike, and was very doubtful whether he would ever be remunerated.

Question by defendant Barnes to said witness.

1st. State what you know of the solvency of the proprietors of the turnpike at the time the transfer was made from Ives to Sample.

Answer. As well as I can recollect, a part of them were considered solvent, and a part were not.

2d. State whether you have a personal knowledge of their present condition. If *not*, state by what means you derived that information.

Answer. I know a part of them are insolvent; the others I only know by common report.

3d question. Did or did you not hear Sample say that he had received from Ives some property, and a claim of $400, for labor he did in completing the turnpike?

Answer. I have heard Sample say he received a note for $400 and two mules, and that he had a claim against T. B. Ives, and that he was benefitted to the amount of one hundred dollars.

Question by Samuel Sample. State whether or not did Sample complete the turnpike, as soon as he conveniently could, after the transfer was made him; and if he did or did not institute suit immediately after the completion of the work.

Answer. He did complete the turnpike as soon as he well could, and suit was instituted as well as I recollect very soon after completion. And further this deponent saith not, and hereunto subscribes his name.

SAMUEL D. SHACKLEFORD.

I, H. H. Fultz, United States commissioner, appointed as aforesaid, do hereby certify, that the foregoing depositions were taken, subscribed, and sworn to before me, at the time and place specified in the caption; that the complainant Samuel Sample was present and cross examined

said witness; that the questions propounded to said witness are in the handwriting of the deponent Barnes, and the questions put on the cross examination of said witnesses, were written by the complainant, Samuel Sample, and the answers to both were written by said witness. I do further certify, that I am not counsel, agent, or attorney of either of the parties mentioned in this suit in this case.

Given under my hand and seal on this 5th day of October, 1841.

H. H. FULTZ. [SEAL.]

SAMUEL SAMPLE or his attorney:

Take notice, that on the 23d day of October instant, I shall attend at the clerk's office of the circuit court of Yallabusha county, in the town of Coffeeville, for the purpose of taking the depositions of Thomas B. Ives and others, to be read as evidence in a certain suit now pending and undetermined in the circuit court of the United States, for the southern district of Mississippi, wherein you are complainant and I am defendant; at which time and place you may attend and cross examine, if you think proper.

October 1st, 1841. SHADRACH BARNES.

THE STATE OF MISSISSIPPI,
Holmes county, ss.

Personally appeared before me, Samuel Stamps, an acting justice of the peace in and for said county, Armstead G. Otey, who states on oath that he did deliver to Samuel Sample, on the 7th day of October, 1841, a copy of the above notice.

A. G. OTEY.

Sworn to and subscribed before me, this 18th October, 1841.

SAMUEL STAMPS, *J. P.*

Interrogatories to be propounded to John Brown, Elijah Wade, and James Wade, citizens of the county of Yallabusha, and State of Mississippi, whose answers thereunto are to be read in evidence at the trial of a certain suit now pending in the circuit court of the United States, for the southern district of Mississippi, to be holden in Jackson, on the first Monday in November, A. D. 1841, wherein Samuel Sample is plaintiff, and Shadrach Barnes is defendant.

Interrogatories to Elijah Wade.

1st. Do you know the parties to this cause, or either of them?

Answer. I know both of the parties.

2d. Did or did you not have a conversation with the plaintiff, Samuel Sample, on the subject of his having purchased the contract to build the turnpike over Big Black swamp, at Boll's ferry, from Thomas B. Ives? And if so, state the substance of that conversation.

Answer. I did have a conversation with Samuel Sample upon that subject, and understood from him (Sample) that he had visited this

county for the purpose of seeing Thomas B. Ives, in relation to a debt either due from Ives to Sample, or else in relation to a debt for which Sample was bound as security for Ives. Sample informed me, that he thought Ives disposed to do the thing that was right in the matter, and that Ives had offered to let him have the contract for building the turnpike across Big Black swamp at Boll's ferry, out of which contract this debt about which Sample expressed himself as having been uneasy, was to have been settled or secured.

3d. State as nearly as possible the time the above conversation took place.

Answer. It was in the summer of 1839, perhaps in the month of June or July of that year.

ELIJAH WADE.

Interrogatories to James Wade.

1st. Are you acquainted with the parties to this suit?

Answer. I am acquainted with Samuel Sample and Shadrach Barnes.

2d. Did or did you not understand Sample to say that he was bound as endorser for Thomas B. Ives to Shadrach Barnes?

Answer. I did hear Sample say that he was bound to Shadrach Barnes as security or endorser for Thomas B. Ives to a considerable amount.

3d. State as nearly as you can the time of this conversation.

Answer. It was in the latter part of the year 1839.

JAMES WADE.

Interrogatories to John Brown.

1st. Are you acquainted with the parties to this suit, or either of them?

Answer. I am acquainted with Shadrach Barnes, but not with Samuel Sample.

2d. Are you clerk of the circuit court of the county of Yallabusha, in the State of Mississippi?

Answer. I am.

3d. Are there any executions on file in your office, issued upon judgment obtained against Thomas B. Ives, at the March term, 1838, of said circuit court, which were returned by the sheriff of said county, "money not made and no property found."

Answer. There are.

JOHN BROWN.

THE STATE OF MISSISSIPPI,
Yallabusha county.

I, Thomas H. Jones, acting justice of the peace, in and for said county, do hereby certify, that on the 23d day of October, A. D. 1841, by virtue of a commission from the circuit court of the United States, for

the southern district of Mississippi, I caused the witnesses, John Brown, Elijah Wade, and James Wade, herein mentioned, to come before me, at the office of the clerk of the circuit court in the town of Coffeeville, in the county aforesaid, who, after being duly sworn to declare the truth, the whole truth, and nothing but the truth, touching the matters in the above cause stated in said commission, made answers to the foregoing interrogatories as herein set forth, and the same was by me reduced to writing in the presence of said deponents, and that they severally subscribed the same in my presence.

In testimony whereof I have hereunto set my hand and seal, this 23d day of October, 1841.

THOMAS H. JONES, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI,
Holmes county.

I, Jacob Perkins, a justice of the peace in and for said county, pursuant to the enclosed notice, and at the request of Shadrach Barnes, in the case of Samuel Sample as plaintiff, against Shadrach Barnes as defendant, now pending in the circuit court of the United States, for the southern district of Mississippi, at Jackson, on the chancery side of said court, I have caused Simeon Sligter, Leland Noel, witnesses for the defendant, to come before me, on the 17th day of November, 1841, at the court-house in the town of Lexington, county and State aforesaid; and having first duly sworn the truth, the whole truth to depose, on their oaths testify as follows:

Deposition of Simeon Sligter, who, being first duly sworn, deposeth and saith as follows, to wit.

1st question, by complainant. Do you, or do you not, know the parties to this cause, or either of them?

Answer. I know them both.

Witness stated further, in answers put by defendant Barnes in presence of complainant and his counsel, that he was present in the month of May, 1840, at the town of Lexington, Holmes county, when some property was brought up by a deputy marshal to be sold under an execution, from the United States court held at Jackson, in the State of Mississippi, in favor of the defendant Barnes, at which time complainant, Sample, got up and made a speech to the crowd, in which he charged that the defendant, Barnes, had taken an advantage of him in the procurement of the judgment upon which said execution had issued; to which charge said Barnes replied, by referring to a letter written to him by said Sample upon the subject, and *and* called upon said Sample to produce it; which was not done; said Sample had not the letter with him, but admitted that he had received it. Witness does not recollect that said Barnes made any other reply to the charge made against him above stated by said Sample, except by referring to the letter above mentioned. Witness further states that said Sample, being now present, states that he still has the letter amongst his papers at home; and afterwards qualified the statement by saying that he believed he had it;

that he filed it away among his papers about a year ago; that he had sent it to Jackson, and filed it away after it was returned to him, and has not looked for it since.

1st question by complainant's counsel. Did or did not said Barnes, at that time, state at what date he had written said letter, or the contents of it?

Answer. If he stated any thing about it I don't recollect it.

2d question by complainant's counsel. Do you or not know any thing of the contents of that letter, or at what date it was written; whether it was before or after the judgment?

Answer. I don't know any thing at all about the letter.

3d question by complainant's counsel. State whether or not you have not heard Dr. Sample say that it was written after the judgment.

To the answering of which question the defendant, by his counsel, objects.

Answer. I have heard him say so; and further this deponent saith not. S. SLIGTER.

Deposition of Leland Noel, who, being duly sworn, deposeth and saith, as follows, to wit:

1st question by defendant's counsel. Were [you] or were you not present at the house of complainant, Sample, in the fall of the year 1839, when said Sample and said Barnes were trying to arrange and settle the judgment now in controversy between them; and if so, state the conversation that took place between them at that time.

Answer. I don't recollect any thing about it.

And the above examination having been carefully read to, and understood by, the deponent, Simeon Sligter, and subscribed by him, it is certified, under my seal, on the day and place named in the caption.

J. PERKINS, [L. S.]
Justice of the peace.

The deposition of E. Fisher, taken in said cause by the defendants.

Interrogatory 1st. Do you know the parties in this suit, or either of them?

Answer. I know both the parties to this suit.

Interrogatory 2d. Did you or did you not hear Samuel Sample and Thomas B. Ives, in a conversation respecting the transfer of the turnpike across Big Black swamp, at Boll's ferry, from Ives to Sample?

Answer. I did hear Ives and Sample hold a conversation in my presence respecting the said turnpike, and the transfer thereof, but this conversation was held for the purpose of relating the facts to *one*, and of obtaining my opinion as counsel thereupon; I must, therefore, submit to the honorable court to say whether I am bound to relate the substance of said conversation or not.

Interrogatory 3d. Did you or did you not at any time hear said Sample speak of the said turnpike to any other person; if so, state all you

know he said on the subject, for what purpose he was interested therein, and how he became interested.

Answer. I did hear Dr. Sample, the complainant, speak of said turnpike, and the transfer thereof, but I cannot state the precise words he used, I can only state the impressions then made upon my mind; which was, that Sample had, by virtue of some transfer from Ives, become interested in the said turnpike, and that this transfer was made for the purpose of securing him, Sample, against certain liability or liabilities which he was then under as security for Ives, and that the debt of defendant Barnes was spoken of in connexion therewith. This conversation was held in the presence of three or four persons, then boarders at Mr. James Wade's, near Coffeeville. It was mere casual conversation, and how it originated I cannot exactly tell; but believe, as I had refused to be his counsel to file a bill in the chancery court touching said turnpike, that it occurred on the subject of employing counsel to conduct the suit for him.

Interrogatory 4th. Do you know whether said Ives ever paid said Sample any thing for or on account of his, Sample's, liability to defendant Barnes, as said Ives, endorser? Please state all you know on the subject.

Answer. I know that Ives, some time about the first of January, 1840, let Sample have two mules; the servant then in my employ brought the mules from Coffeeville to Franklin, Holmes county, and left them at Col. Dulaney's for Sample. Mr. Ives and myself about this time started to Jackson together, and the mules were received by Sample, as I a few days after heard him say. I do not know for what debt, or on what account the mules were by Ives sold to Sample, but, according to the best of my recollection now, I either heard Ives or Sample, one, state that they were sold to Sample in consideration for money which he had paid, or was about to pay in a short time upon this, Barnes', debt. I do not remember any thing very distinctly that occurred which I can answer under this interrogatory, except the mules, and I would most willingly forget all about them, if it were possible to do so; and further this deponent saith not.

E. FISHER.

Sworn to and subscribed, before me—

Cross examination.

Interrogatory. State [in] what kind of money the contract for building said turnpike was to be paid, and what is the worth of said money?

Answer. I understood from Ives and Sample that the contract was to be performed in Brandon money; that it was so written in the agreement. I never saw the agreement, to the best of my recollection. I am informed that Brandon money is worth from one to three cents in the dollar, but know nothing personally on the subject; and further this deponent saith not.

Sworn to before me this 19th day of February, 1842, and subscribed

in my presence by E. S. Fisher, witness within named. Given under my hand and seal at Jackson, the date above.

GEO. W. MILLER,
U. S. D. C. Com.

Agreement.

In the case of Samuel Sample vs. Shadrach Barnes, in the United States circuit court at Jackson, Miss., it is agreed that said Barnes go forthwith to said Sample's residence, and inform him he may take his deposition before a justice of the peace forthwith, and said Barnes will attend and cross examine; and the said Barnes may proceed forthwith to take his depositions, and said Sample will cross examine; and said depositions be returned into court thus taken, and they shall be read as evidence; but the failure of either party to take the proof not to prejudice the trial.

2d June, 1842.

WM. THOMPSON,
Att'y for Barnes.
W. YERGER,
For Sample.

The deposition of Samuel G. Lipsey, taken before John C. Cutler, an acting justice in the town of Franklin, Holmes county, on the 6th day of June, 1842, to be read in evidence in a suit now pending on *on* the chancery side of the federal court, wherein Samuel Sample is complainant, and Shadrach Barnes is defendant.

Interrogatory 1st. Do you know the parties to this suit?

Answer. I do.

2d interrogatory. Do you know whether or not the said Sample completed the turnpike across Big Black swamp, which was commenced by Thos. B. Ives?

Answer. I do.

3d interrogatory. What amount of money do you suppose completing said turnpike cost said Sample?

Answer. I would suppose it was worth $2,500.

4th interrogatory. What amount of means did Thos. B. Ives furnish the said Sample to assist in the completion of said turnpike?

Answer. A note on J. N. Wharton for $400, and two small mules, said to be sold for $75.

5th interrogatory. State the condition of the proprietors of the turnpike, whose obligation the said Sample holds.

Answer. I know a part of them to be insolvent, and have heard that the balance were.

6th interrogatory. State what kind of funds the proprietors of the turnpike were to discharge their obligations to the said Ives in.

Answer. I have always understood that Brandon or Grenada money was the kind of funds.

7th interrogatory. State what is the value of these funds.

Answer. I would suppose them worthless.

8th interrogatory. Do you believe that said Sample will ever be remunerated for the amount he has spent in the completion of the said turnpike?

Answer. I believe he will not.

9th interrogatory. Have you, or have you not, ever heard the said Sample say that he has or has not received any funds whatsoever from Thos. B. Ives for the use of said Barnes?

Answer. I never.

10th interrogatory. Has the said Barnes ever taken your testimony in the above mentioned suit?

Answer. He has.

11th interrogatory. What did the said Barnes state that he would do with it?

Answer. Mr. Barnes stated that he did not expect to file it.

Cross examination by defendant Barnes.

1st interrogatory. State upon what fact you predicated your supposition that the completion of the turnpike would cost $2,500.

Answer. From being frequently at the pike, and seeing what labor was done.

2d interrogatory. State the number of hands employed, the time they were employed, and in what season of the year they were employed.

Answer. I cannot recollect the number of hands; time, from the latter part of July to some time in December following.

3d interrogatory. Did, or did you not, state on a former occasion, when being asked by defendant Barnes what you knew of the arrangement of the turnpike between Sample and Ives, that you knew nothing of Doct. Sample's business, further than you were employed as overseer?

Answer. I do not recollect.

5th interrogatory. Do, or do you not, recollect in travelling with me from towards Jackson, of our being in conversation respecting what you might know respecting the case of Sample vs. Barnes?

Answer. We were in conversation.

6th interrogatory. Did, or did not, Barnes, about the time you were about to separate, tell you that he thought you would be an important witness, and that he should take your deposition?

Answer. He, Barnes, did not say important witness, but said he would take my deposition at my house or at Franklin.

7th interrogatory. Did he, the said Barnes, give any reason why he wanted your testimony? If so, state as near as you can the substance of the conversation.

Answer. I do not recollect.

S. G. LIPSEY.

Sworn to and subscribed to before me, this 6th day of June, 1842.

JOHN C. CUTLER, *J. P.* [SEAL.]

100.

The deposition of Job Taylor, taken before John C. Cutler, an acting justice of the peace in the town of Franklin, Holmes county, on the 6th day of June, 1842, to be read in evidence in a suit now pending on the chancery side of the federal court, wherein Samuel Sample is complainant, and Shadrach Barnes is defendant.

1st interrogatory. State whether or not you did proceed, as justice of the peace, to take the deposition of S. G. Lipsey, at the request of the defendant Barnes, on the 4th day of June, instant.

Answer. I did.

2d interrogatory. Did you on that occasion swear him to tell the truth, the whole truth, and nothing but the truth?

Answer. I did.

3d interrogatory. State as near as you can recollect his answers to the interrogatory put by defendant Barnes.

Answer. To the 1st interrogatory, whether he did, or did not, know the parties, he answered he did; to the 2d, whether he was present at an interview between Samuel Sample and Shadrach Barnes in the year 1839, he stated that he recollected of seeing said Barnes at said Sample's some two or three times, but the time he did not recollect; to the 3d question, whether or not he could state the purport of the conversation, or any part thereof, that took place between Sample and Barnes, he answered he could not; to the 4th question, do you, or do you not, recollect Barnes and Sample riding out into the field together to look at some negroes, and whether he did not recollect on their return that something was said about the purpose of going to see the negroes, he answered that he could not say that he recollected such an occurrence; 5th, on being asked if he did, or did not, know any thing about the arrangement between Thos. B. Ives and Samuel Sample concerning the turnpike, he answered that he knew nothing about Sample's business further than he was his overseer.

4th interrogatory. State whether you were present on this day, 6th June, at the taking of the depositions of S. G. Lipsey by Samuel Sample.

Answer. I was.

5th interrogatory. State whether or not the said Sample did not, in a dictatorial manner, attempt to dictate in what manner the witness should make his answers to the cross interrogatories of defendant Barnes; also, all said Sample's conduct during the pendency of said Barnes cross examining said witness.

Answer. Sample did say a great deal while said Barnes was cross examining said Lipsey, as I thought in a dictatorial manner, but whether it had any particular influence on said Lipsey I cannot tell; there was also an altercation took place between Sample and Barnes, and after some harsh words, said Sample struck said Barnes several times, until I took him away from him; after which said Sample left the house till said Barnes was through with the examination.

Cross examination by Sample.

1st interrogatory. State whether or not Sample was absent during the greater part of the cross examination of the said Lipsey.

Answer. He was present till the third interrogatory was proposed, at which time the altercation took place, after which he left the house.

2d interrogatory. Did you not hear Sample tell Barnes that he might have the turnpike obligation he held, provided he would pay him the amount that was still due him for completion of the turnpike?

Answer. I did.

3d interrogatory. State what reply did Barnes make.

Answer. Barnes stated that he had nothing to do with the turnpike.

JOB TAYLOR.

Sworn to and subscribed to before me, this 16th day of June, 1842.

JOHN C. CUTLER, *J. P.* [SEAL.]

The testimony of Benjamin Griffin, taken before me, John C. Cutler, an acting justice of the peace in the town of Franklin, Holmes county, State of Mississippi, on the 10th day of June, 1842, to be read as evidence in a suit now pending on the chancery side of the federal court, where Samuel Sample is complainant, and Shadrach Barnes defendant.

1st interrogatory. Do you know the parties to the said suit?

Answer. I do.

2d interrogatory. Do you know whether or not, the said Sample completed the turnpike across Big Black [creek] which was commenced by Thomas B. Ives?

Answer. I have understood and believe that he did.

3d interrogatory. What amount do you suppose it cost the said Sample to finish the said turnpike?

Answer. I have understood and believe that it cost him two or three thousand dollars.

4th interrogatory. State what you believe to be the condition of the proprietors of the said turnpike.

Answer. I have understood and believe that they are all insolvent.

5th. I have understood from both parties that it was Brandon and Granada money.

6th interrogatory. State what is the value of these funds at this time.

Answer. I consider them wholly worthless.

7th interrogatory. Do you believe the said Sample will ever be remunerated for the completion of the said turnpike?

Answer. I know of no means by which he ever can be remunerated.

8th interrogatory. State whether or not the said Barnes has taken your testimony in the above case, and also state when, where, and before whom.

Answer. He has, which was done at Lexington, before H. H. Fultz, esq.

9th interrogatory. State whether or not it has been filed as evidence?

Answer. I do not know. BENJ. GRIFFIN.

Sworn to and subscribed to before me, this 10th day of June, 1842.
J. C. CUTLER, *J. P.* [SEAL.]

And now, to wit, at the November term, A. D. 1848, of said court, to wit, on the 18th day of November, in the year of our Lord one thousand eight and hundred and forty-eight, the final decree of said court was rendered in this case, in the words and figures following, to wit:

"This cause having been submitted for final hearing and decree, on the bill, answer, exhibits, and proof, and having been argued by counsel and fully heard, and the court being now sufficiently advised of and concerning the premises, doth see fit to order, adjudge, and decree, and it is hereby ordered, adjudged, and decreed, that the injunction heretofore granted to the complainants in this cause be and the same is hereby dissolved; and it is further ordered, adjudged, and decreed, that the bill of complaint be and the same is hereby dismissed; and that the defendant have and recover of the complainants his costs herein expended, for which execution may issue.

Appeal Bond.

Know all men by these presents: That we, Samuel Sample, Israel W. Pickens, Burwell Scott, and John N. Sample, and Isaac Sample, are held and firmly bound unto Shadrach Barnes, in the penal sum of thirteen thousand seven hundred dollars; for which payment we bind ourselves, our heirs, &c. Given under our hands and seals this 18th day of November, in the year 1848.

The condition of the above obligation is this: Whereas a suit was pending on the equity side of the circuit court of the United States, for the southern district of Mississippi, at Jackson, in which Samuel Sample, [Israel] W. Pickens, and Burwell Scott, were complainants, and Shadrach Barns was defendant, in which a decree was this day made in favor of said defendant dismissing said bill, from which decree complainants obtained an appeal to the next term of the Supreme Court of the United States, upon executing this bond.

Now if the said Sample, Pickens, and Scott, said complainants, shall prosecute said appeal with effect, or in case they shall fail to make their plea good, and shall not prosecute said appeal with effect, shall pay all costs and damages the defendants may sustain by taking said appeal, then this obligation to be void, otherwise it remains [in] full force and virtue.

JOHN N. SAMPLE, [SEAL.]
JAMES SAMPLE, [SEAL.]
ISAAC SAMPLE, [SEAL.]
SAM'L SAMPLE, [SEAL.]
ISRAEL W. PICKENS, [SEAL.]
BURWELL SCOTT. [SEAL.]

I approve of the within bond and securities. Given under my hand this 26th day of November, 1848.

S. J. GHOLSON,
Judge U. S. D. C. for Mississippi.